

ITAT/59/2018
IA No.GA/1/2018 (Old No.GA/593/2018)
IA No.GA/2/2018 (Old No.GA/594/2018)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME
TAX CENTRAL-1, KOLKATA

-Versus-

VIVEK MUNDRA

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

Mr. Pratyush Jhunjhunwala, Adv.
Mr. S. Rudra, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th April, 2022.

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Advocate assisted by Mr. S. Rudra, learned Advocate appearing for the respondent/assessee.

There is a delay of 129 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay. We are satisfied with the reasons given therein. Accordingly, the delay in filing the appeal is condoned and the application for condonation of delay (IA No.GA/1/2018 (old No.GA/593/2018) is allowed.

Re: ITAT/59/2018:

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 2nd June, 2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the 'Tribunal' in short) ITA No.2171/Kol/2014 for the assessment year 2010-11.

The revenue has raised for the following substantial questions of law for consideration:

- "a) *Whether on the facts and in the circumstances of the case, Ld. Tribunal has erred in law as well as on facts in dismissing the appeal of the revenue and upholding the order of the CIT(Appeals) by treating the income of Rs.3,02,85,462/- earned on trading of shares as short term capital gains instead of income from business and profession by disregarding the clear findings of the assessing officer that the main motive of the assessee was to earn profits by trading in shares rather than investments ?*
- b) *Whether on the facts and in the circumstances of the case conclusion arrived at by the Ld. Tribunal in holding the surplus earned by the assessee on sale of shares as short term capital gain and not as business income by ignoring the fact that share transaction were connected with the finance business of the assessee and it was done with the motive of not making investment but to earn profit to be used in his finance business, is perverse ?*

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Advocate assisted by Mr. S. Rudra, learned Advocate for the respondent/assessee.

A computation of the tax effect in this appeal has been placed before us from which it is seen that the tax effect is ₹46,79,105/-.

If that be so, the revenue cannot pursue this appeal on the ground of low tax effect. Accordingly, the appeal (ITAT/59/2018) stands dismissed on the ground of low tax effect. Consequently, the substantial questions of law suggested by the revenue are left open.

In the result, the connected application for stay IA No.GA/2/2018 (Old No.GA/594/2018) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)